IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5006 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADODARA JILLA KHADI GRAMODYOGSAHAKARI MANDLI LTD

Versus

MADHUBEN DESAIBHAI MALI

Appearance:

MR BS PATEL for Petitioner

MR SHAJI VIDYADHARAN for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/08/2000

ORAL JUDGEMENT

#. Rule. Mr.Shaji Vidyadharan, learned advocate for the respondent waives service of rule.

#. By way of this petition under Article 227 the petitioner seeks to challenge the award made by the

Labour Court, Vadodara in Reference LCV No.19/92 whereby the respondent is ordered to be reinstated with full back wages and cost of Rs.2,000/-.

#. The main grievance canvassed by the petitioner is that the original appointment of the respondent was not regular and, relying upon a letter issued by the clerk of the petitioner, it is believed by the Labour Court that the respondent was regularly appointed. The other submission is that the respondent was working only as a part-time employee and the presumption based on curfew pass that the respondent was working from 10:30 A.M. to 7:30 P.M. is incorrect. Lastly it is submitted that by virtue of the impugned order the amount of back wages ordered to be paid to the respondent is directed to be recovered from the Manager of the petitioner who is a Co-Operative Society mainly dependent upon Government grants.

#. It is not seriously disputed that the respondent workman has worked under the petitioner for about 3 years. The plea of abandonment of service by the respondent has not been accepted by the Labour Court after considering the material and evidence on record. It is not relevant whether the respondent was employed on part time basis or as a full time workman as far as the legality or otherwise of the termination of her service is concerned. However, it has to be observed that while the Manager of the petitioner was personally not a party to the proceeding before the Labour Court and obviously he was not given an opportunity to defend himself, it would be improper to saddle him with any liability arising from the service of the respondent or the termination thereof. The impugned award calls for modification to that extent. Similarly, the award of interest at the rate of 18% on the amount of back wages is in no way justified. The manner of calculating the rate of back wages is also required to be clarified in view of the fact that there has been a dispute among the same parties in respect of the wages to which the respondent was entitled during the period of her service. That separate dispute has also culminated into an order of Labour Court and the same is challenged in the companion petition being Special Civil Application No.5005/99 in which appropriate order is made while disposing the petition.

#. Under the circumstances as above, the petition is partly allowed and impugned order is modified to the extent that the respondent shall be reinstated with full back wages to be counted on the basis of the minimum

wages and special allowance applicable during the relevant period under the Minimum Wages Act 1948. The respondent shall be reinstated within 30 days from today. The rest of the direction in the impugned order are quashed. Rule is made absolute in the above terms with no order as to costs.

kks